No. 83-712

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEW JERSEY,

Petitioner,

—vs.—

T.L.O., a Juvenile,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

SUPPLEMENTAL BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY, *AMICI CURIAE*, IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI*

The American Civil Liberties Union ["ACLU"] and the ACLU of New Jersey were amici before this Court when this case was earlier accepted for plenary review. See Brief of the ACLU and ACLU of New Jersey Amici Curiae. Subsequent to briefing and argument, the Court on July 5, 1984 restored this case to the calendar for reargument and requested the parties to brief and argue an additional question:

> Did the assistant principal violate the Fourth Amendment in opening respondent's purse in the facts and circumstances of this case?

In response to this additional question, petitioner for the first time has now argued that the Fourth Amendment should be entirely inapplicable to all searches conducted by all public school officials on all students.

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* The parties have consented to the filing of this Supplemental Brief, and their letters of consent have been filed with the Clerk of the Court under Rule 36.2 of the Rules of this Court.

Although the Solicitor General, in his Brief for the United States as Amicus Curiae, has conceded the applicability of the Fourth Amendment, the Solicitor General nonetheless has argued that public school officials should be granted an unlimited categorical exception to the Fourth Amendment's probable cause requirement so as to allow all public school officials to search all students according to something akin to a mere hunch standard.

These government efforts to remove Fourth Amendment protections from public school students are, however, entirely at odds with the purpose and scope of the Fourth Amendment. Under this Court's rulings, there should be no doubt in the facts and circumstances of this criminal case that: first, the Fourth Amendment does protect students from unreasonable searches by public school officials; and second, there is applicable

here no categorical exception from the Fourth Amendment's probable cause requirement. In order to address these basic principles, we submit this Supplemental Brief in support of respondent.

SUMMARY OF ARGUMENT

Protection against arbitrary searches and seizures by government officials is essential to a democratic society premised on the integrity of the individual. Once a society permits arbitrary intrusions into the personal integrity of its citizens, it has crossed a fateful threshold which the Founders rightly believed is utterly incompatible with democratic self-government.

Totalitarian societies express the subordination of the individual to the group by subjecting their citizens to arbitrary intrusions into personal privacy which destroy their sense of individual autonomy

and self-worth. Free societies, because they respect the individual, refuse to permit intrusions into personal privacy in the absence of probable cause, or -- at an absolute minimum -- an objectively reasonable basis for believing that the target of the intrusion is in possession of evidence of unlawful activity.

While a policy of arbitrary intrusions into personal privacy is arguably more effective in the short-run in controlling its targets, the Founders realized -- and the 20th century bears tragic witness to their wisdom -- that government power to search and seize on less than probable cause (to say nothing of less than reasonably objective suspicion) destroys the sense of self-worth and the respect for individual dignity which is a precondition to effective democracy. The fundamental issue raised by this case is whether this Court will give way to appeals

to hysteria and sweep away the Founders' privacy protection from our public schools. In stark terms the issue is will our schools be training grounds for citizenship in a democracy or will they teach students that individual dignity is a myth from a bygone era that must give way to the law enforcement demands of a frightened majority?

In Hudson v. Palmer, No. 82-1630 (1984), this Court eliminated the Fourth Amendment as an effective protection of personal integrity in prison. By utilizing the circular concept of expectation of privacy, this Court ruled that since prisoners enjoy no expectation of privacy in their cells, they are entitled to no Fourth Amendment protection against even bad faith searches. Of course, the asserted need for constant surveillance over a criminal population in prison is hardly present in our schools, despite the strident assertions of certain school officials. Put

bluntly, the issue is whether American schools are to be equated with jails in defining the degree of personal privacy enjoyed by students.

The suggestion that children can be educated for citizenship in a democracy by teaching them that the need for order and discipline justifies searches on less than probable cause strikes at the value system that keeps us free. Not surprisingly, therefore, whether the case has arisen in the context of free speech,[1] religious liberty,[2] racial justice,[3] or procedural fairness,[4] this Court has recognized that our educational system cannot function in isolation from the constitutional values of a

1. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

2. Stone v. Graham, 449 U.S. 39 (1980).

3. Brown v. Board of Education, 347 U.S. 483 (1954).

4. Goss v. Lopez, 419 U.S. 565 (1975).

democratic society.

I. Petitioner's assertion that the Fourth Amendment proscribes unreasonable searches only by law enforcement officials is refuted by two converging lines of cases. First, as this Court recognized in such cases as Tinker, Stone, Brown, and Goss, students, who "are 'persons' under our Constitution," do not "shed their constitutional rights . . . at the schoolhouse gate." Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 511 (1969). Second, as this Court recognized in such administrative search cases as Camara and See and their progeny, the Fourth Amendment safeguards the "privacy and security of individuals against arbitrary invasions" not just by police officers but "by government officials." Camara v. Municipal Court of San Francisco, 387 U.S. 523, 528 (1967). As a matter of constitu-

tional law, and on the record here, the Fourth Amendment is applicable to this criminal proceeding.

II. Contrary to the assertion made here primarily by the Solicitor General, in his Brief for the United States as Amicus Curiae, this case presents no opportunity for the Court to adopt and to apply a categorical exception to the Fourth Amendment's probable cause requirement for searches in the public schools. To the extent that a categorical exception arguably may be appropriate in response to particular dangers in the public schools, the exception could be created and applied only so long as it met the three-part analytical test set forth by this Court in Camara, 387 U.S. at 534-37: (a) the category of searches must be in response to and limited to confronting a grave public danger; (b) it must be shown that the public interest

would not be served under the traditional probable cause standard; and (c) the searches must constitute a relatively limited invasion of privacy compared with police searches for evidence of wrongdoing. Here, none of these three tests has been or can be met.

A. Although threats to school safety and security from student possession of weapons, drugs and other contraband may very likely constitute a serious public danger, regulation of the danger does not give rise to an unlimited categorical exception. Rather, categorical exceptions must be limited to the narrow purposes for which they are permitted. A border patrol stop, for example, is allowable for questioning about citizenship, immigration status, and any suspicious circumstances, but "any further detention or search must be based on consent or probable cause." United States v. Brig-

noni-Ponce, 422 U.S. 873, 881-82 (1975); cf., e.g., Terry v. Ohio, 392 U.S. 1 (1968). Since the search by the assistant principal here was not for weapons, drugs or other contraband, this case does not concern the applicability of any alleged categorical exception designed to combat threats to school safety or security.

B. Petitioner has not shown and cannot show that the public interest would not be served under the traditional probable cause standard. Given the fact that school officials "are in direct, day-to-day contact with students both in the classrooms and in the other varied activities of a modern school," Ambach v. Norwick, 441 U.S. 68, 78-79 (1979), it is apparent that the traditional probable cause standard can be met in virtually every instance in which an other-than-purely-arbitrary search is deemed neces-

sary. Moreover, in view of the "importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests," id. at 76, the public interest here provides "reason for scrupulous protection of Constitutional freedoms of the individual," West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943).

C. Finally, a school official's search of a student's purse is not a relatively limited invasion of privacy compared with police searches but instead is every bit as intrusive. A purse, like a pocket, carries a person's most intimate personal belongings. An invasion of that personal privacy for a female student -- revealing notes from friends and items of personal hygiene such as tampons or birth control pills -- can

be not just embarrassing, but traumatic. That a search through these personal items is made by a school official with whom the student has ongoing contact, rather than by a police officer with who the student would have no further contact, in fact makes a school official's search even more intrusive into personal privacy.

Not only is the Fourth Amendment applicable here, but on the record in this criminal case there is no ground for a categorical exception to the Fourth Amendment's probable cause requirement.

ARGUMENT

This case raises two interrelated issues: first, what constitutional standard defines the degree of personal privacy enjoyed by students attending public schools pursuant to our Nation's commitment to free, compulsory public education; and, second,

what enforcement mechanisms should be available to assure compliance with the appropriate substantive standard? Important as these issues are, however, the factual and legal context of the case before the Court permits consideration of only a small portion of the general issue.

The Supreme Court of New Jersey, confronted with petitioner's attempt to use the fruits of the search of a student in its case-in-chief in a criminal proceeding against the student, ruled, first, that the substantive standard imposed by the Fourth Amendment on searches of students by educational officials was one of reasonable suspicion;[5] and, second, that the fruits of a

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5. The standard articulated by the Supreme Court of New Jersey provided that:

> . . . when a school official has reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, the school official has

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search on less than reasonable suspicion were inadmissible as part of the State's case-in-chief in this criminal proceeding.

The New Jersey Supreme Court did not rule on, and did not have the oportunity to rule on, whether evidence obtained in violation of the appropriate constitutional standard could be used by educational officials in an intra-school setting.[6/] Given the factual and legal context in which this case arises and the decision of the court below,

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the right to conduct a reasonable search for such evidence.

State in the Interest of T.L.O., 463 A.2d 934, 941-42 (N.J. 1983).

6. Entirely separate from this criminal case, and the only proceeding in which the assistant principal's search and seizure conduct was tested in the context of school disciplinary action, was the proceeding in the Superior Court, Middlesex County, Chancery Division, in which the court quashed T.L.O.'s suspension on the ground that the assistant principal's search and seizure in the context of school discipline had violated the Fourth Amendment. This decision was not appealed by defendant Piscataway Board of Education. No issue as to intra-school discipline is in this criminal case. State in the Interest of T.L.O., 463 A.2d 934, 937 n.2 (N.J. 1983).

we suggest that only a single narrow issue is actually before the Court: the fact-bound question of whether the majority below correctly applied its less-than-probable-cause legal standard to the facts of this case. This is hardly a substantial federal question worthy of review by this Court.

Only if the Court wishes to alter the "reasonable suspicion" standard articulated below by either raising the degree of probability to probable cause or reducing it to mere hunch is review appropriate. It is in this context that we have framed our response to the additional question presented by the Court.

I. THE FOURTH AMENDMENT, APPLICABLE TO THIS CRIMINAL PROCEEDING, PROTECTS STUDENTS AND THEIR "PAPERS AND EFFECTS" AGAINST UNREASONABLE SEARCHES BY PUBLIC SCHOOL OFFICIALS

The Fourth Amendment's protection of "people" and their papers and effects against

unreasonable searches and seizures protects "people" who are students, particularly in a criminal proceeding as here, against unreasonable searches by school officials. This undeniable conclusion[7] flows from two firmly established principles: that students as persons do not shed their constitutional rights at the schoolhouse gate; and that the Fourth Amendment safeguards individual privacy against arbitrary intrusions by government officials.

1. "Students in school as well as out of school are 'persons' under our Constitu-

7. The applicability of the Fourth Amendment to school officials is discussed more fully in our initial Brief of the ACLU and the ACLU of New Jersey Amici Curiae. That this proposition seems beyond dispute is revealed by petitioner's acceptance of the principle in its initial Brief for Petitioner; see also Oral Argument Transcript at 6-8. The principle similarly is not questioned, on rehearing, in the Brief for the United States as Amicus Curiae.

tion," and they accordingly "are possessed of fundamental rights which the State must respect." Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 511 (1969). Stated otherwise, students do not "shed their constitutional rights . . . at the schoolhouse gate." Id. at 506.

In accord with these principles, as articulated and as applied in Tinker to protect students' First Amendment rights to free speech, this Court has repeatedly recognized that fundamental constitutional protections are accorded to students against intrusions by school officials. See, e.g., Island Trees Union Free School District v. Pico, 457 U.S. 853 (1982) (First Amendment protection against school censorship); Goss v. Lopez, 419 U.S. 565 (1975) (Fourteenth Amendment due process protection against school disciplinary action without notice and a hearing); Brown v. Board of Education, 347 U.S. 483

(1954) (Fourteenth Amendment equal protection against school segregation); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) (First Amendment protection against compulsory flag salute and pledge);[8] cf. In re Winship, 397 U.S. 358 (1970) (Fourteenth Amendment due process protection against allowing less than proof beyond a reasonable doubt in juvenile proceedings); In re Gault, 387 U.S. 1 (1967) (Fourteenth Amendment guarantee of procedural due process in juvenile proceedings).

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8. This is not to say that all protections found in the Constitution must be accorded to students (or adults) vis-a-vis the actions of school officials, since some constitutional protections are limited by their own terms. Thus, this Court's decision in Ingraham v. Wright, 430 U.S. 651 (1977), holding the Eighth Amendment inapplicable to public school corporal punishment, is not contrary to the authority above since the three parallel proscriptions in the Eighth Amendment limit only "the power of those entrusted with the criminal-law function of government," and in fact were designed only "to protect those convicted of crimes." Id. at 664. There are no such limitations as to the "people" protected by the Fourth Amendment.

2. "The basic purpose of [the Fourth] Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." Camara v. Municipal Court of San Francisco, 387 U.S. 523, 528 (1967); see also See v. Seattle, 387 U.S. 541 (1967).

That school officials are government officials subject to constitutional constraints is made plain by the foregoing authority. That arbitrary invasions violative of the Fourteenth Amendment include administrative intrusions made by government officials and not just criminal searches made by police officers is made plain not only by Camara (housing official) and See (building inspector) but by countless other decisions by this Court, see, e.g., Michigan v. Clifford, No.82-357 (1984) (fire department officials); Marshall v. Barlow's, Inc., 436 U.S.

307 (1978) (OSHA inspectors); cf. Michigan v. Tyler, 436 U.S. 499 (1978) (firefighters).

3. The convergence of these two lines of authority leaves no question that students are protected by the Fourth Amendment against intrusive searches not only by police officials, Washington v. Chrisman, 455 U.S. 1 (1982), but also by school officials particularly where, as here, the official conduct leads to a criminal proceeding.

Although petitioner initially conceded the applicability of the Fourth Amendment here, see supra note 7, as does the United States, id., petitioner in its Supplemental Brief Upon Reargument at 10-14 now asserts that the Fourth Amendment, under an historical analysis, proscribes unreasonable searches only by law enforcement officials. Petitioner's assertion, however, conveniently overlooks the importance of this Court's

decisions in Camara and See and their progeny, and also ignores the powers conferred by New Jersey statutes on school officials to regulate student conduct and to impose serious punishment, compare State in the Interest of TLO, 463 A.2d 934, 940 (N.J. 1983), with Goss v. Lopez, 419 U.S. 565, 574-76 (1975). Equally flagrant is petitioner's disregard of the often-intimate working relationship between school officials and police officials, a relationship which is required as a matter of law in many states[9] and which is a matter of record in this case: "The police were immediately called, and they took T.L.O. to police headquarters." State in Interest of T.L.O., 448 A.2d 493, 495 (N.J. App. Div. 1982) (Joelson, J., dissenting); compare Camara, 387 U.S. at 530-31: "In some

9. See the discussion and citations in our initial Brief of the ACLU and ACLU of New Jersey Amici Curiae at 21-22 n.9.

cities, discovery of a violation by the inspector leads to a criminal complaint."

On this record, the Fourth Amendment is applicable to this criminal proceeding.

II. IN THE FACTS AND CIRCUMSTANCES OF THIS CASE, THERE IS NO BASIS FOR A BROAD CATEGORICAL EXCEPTION TO THE FOURTH AMENDMENT'S REQUIREMENT OF PROBABLE CAUSE FOR SEARCHES IN PUBLIC SCHOOLS

Except in certain carefully defined classes of cases, a nonconsensual search or seizure is unreasonable without a warrant and probable cause.10/ Although we agree with

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10. We do not separately address the issue whether a warrant would be required for school searches. That is a separate and distinct question from that of whether such searches may be made upon a lesser showing than is typically needed to establish probable cause. As Camara illustrates, the considerations which bear on these questions are quite different.

Even if, as we submit, the traditional probable cause standard applies here, it does not follow that a warrant would be necessarily required in all circumstances:

> In the school and college search cases, the warrant issue would seem to arise only as to the search of a place, such as a locker or dormitory room. Generally, the law has not required search

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the Solicitor General's observation that the reasonableness of particular classes of searches or seizures generally is determined on a categorical basis rather than a case-by-case approach, such an analysis does not justify placement of school searches in a special categorical exception to the probable cause requirement.

Arguing for a "reasonable suspicion" standard, the Solicitor General and petitioner's other amici rely primarily on the notion that a reduced level of suspicion ought to be applied when the search is not one by police or uniformed authority and is

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> warrants for the search of a person. And while it is true that most such searches are made incident to arrest, . . . it does not follow that a warrantless search of a student by school authorities is improper simply because there is no arrest. Given the authority of the school officials to maintain some degree of control, "it does not seem important that the technical concepts of 'arrest' and 'stop' be adopted as such for school administrator searches."

La Fave, Search and Seizure, § 10.11(d) at 469 (footnotes and citation omitted).

not instigated as a criminal investigation.[11] This Court, however, in the administrative search cases of Camara v. Munici-

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11. The Solicitor General also argues for a lower level of reasonableness based on the doctrine of in loco parentis, on analogies to border searches and pervasively regulated businesses, and on the alleged constitutional substitute of public scrutiny. See Brief for the United States at 17-25. This shotgun approach misses the mark. Conceding that the benevolent in loco parentis doctrine "does not fit easily within a compulsory system of education," the Solicitor General argues that the concept nevertheless retains vitality in the context of an inquiry into "reasonableness" because the public school official assumes "custody" of the student during school hours. Brief for the United States at 20-21. In an artful, but ultimately inapposite use of the "community caretaking" rationale (which has been applied in the automobile inventory cases for warrantless searches by police with custody and control over the object searched), the Solicitor General argues that the "analogous" custody and responsibility of school officials for students compel a similarly lowered threshold of suspicion for school searches. That argument ignores crucial distinctions between the two types of searches. The search at issue here, of course, involved a personal search, not a search of an "object" over which the school official had custody or control. More importantly, however, the "caretaking" rationale arises in a non-investigatory setting in which the police, in taking an inventory, merely follow standard property protection procedures. Cady v. Dombrowski, 413 U.S. 433 (1973). Here, in contrast, the search was conducted for the express purpose of discovering evidence of wrongdoing.

Also beside the point is the Solicitor General's reliance on attempted analogies to border searches, e.g., United States v. Ramsey, 431 U.S. 606 (1977) (opening international mail at border in search of [cont'd. on next pg]

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customs violations) and searches of certain pervasively regulated businesses such as firearms dealers, e.g., United States v. Biswell, 406 U.S. 311 (1972). Neither of these settings provides a persuasive analogy to the public school context, where attendance is compulsory, and searches have not been limited by statutory or regulatory guidelines. First, both border searches and searches under regulatory inspection systems have been carefully limited in place and scope. See United States v. Ramsey, 431 U.S. at 623 (applicable postal regulations flatly prohibit the reading of opened mail absent a search warrant); Colonnade Catering Corp. v. United States, 397 U.S. 72, 77 (1970) (Congress authorized a fine, not forcible entry, for failure to permit inspection of liquor stored on premises). Second, persons crossing a border and persons entering a pervasively regulated business (which deals in inherently harmful or dangerous substances or processes) do so with full knowledge of being subject to inspection. The suggestion that school students, under compulsory attendance rules, voluntarily "waive" full Fourth Amendment protections for the duration of their school years cannot be sustained.

The Solicitor General's final contention, that public scrutiny over the schools is sufficient to repeal the Fourth Amendment's full protection for students, must also be rejected. Nowhere in Ingraham v. Wright, 430 U.S. 651 (1977), did this Court deny to students qua students any Eighth Amendment rights which are available only to persons "convicted of crimes," id. at 664. See supra note 8. Constitutional rights -- such as those recognized in Tinker, Stone, Brown, and Goss, and such as that at issue here -- neither evaporate nor are subject to popular vote whenever they are alleged to be under public scurtiny. Cf. Cooper v. Aaron, 358 U.S. 1 (1958).

pal Court of San Francisco, 387 U.S. 523 (1967), and See v. Seattle, 387 U.S. 541 (1967), explicitly rejected the claim that lesser Fourth Amendment standards apply where the searching official is not a police officer or where the objective of the search is not a criminal prosecution.

Instead, the Court ruled that the constitutionality of an exception to the ordinary requirement of probable cause involves "balancing the need to search against the invasion the search entails," and outlined three factors to be weighed under such a balancing test: (a) whether the search is in response to a unique and grave public danger which must be dealt with by means which will be highly effective; (b) whether the relevant public interest would not be served under the traditional probable cause standard; and (c) whether the search constitutes a relatively limited invasion of privacy compared with the

typical police search for evidence of crime. Camara, 387 U.S. at 534-37; cf. Brown v. Texas, 443 U.S. 47, 51 (1979) (determining the validity of an alleged categorical exception to the traditional requirement of probable cause "involves a weighing" of the "gravity of the public concerns served by the seizure" and the "degree to which the seizure advances the public interest" compared with the "severity of the interference with individual liberty"). In Camara, all three of the factors were met, with the result that searches on less than probable cause were accordingly permissible. Similarly, if public school searches under a standard less than probable cause "are to pass muster under Camara", all three of the factors must be met. See LaFave, Search and Seizure, § 10.11 at 457-58. None of the three requirements are met here.

In the facts and circumstances of this

case, the categorical exception urged by petitioner and its amici cannot be justified under the Camara requirements. A search to determine a student's credibility following a teacher's eye witness report of unauthorized cigarette smoking does not constitute a relevant means of responding to theoretical threats to school safety and security posed by weapons and drugs, especially where the search entails an intrusive invasion of personal privacy.

A. ANY CATEGORICAL EXCEPTION TO THE FOURTH AMENDMENT'S PROBABLE CAUSE STANDARD, RELEVANT TO PROTECTING STUDENTS FROM DRUGS, WEAPONS AND OTHER THREATS TO THE ACADEMIC ENVIRONMENT, MUST BE LIMITED TO SEARCHES DESIGNED TO PROTECT THAT INTEREST

Just as there is an undeniable public interest in inspecting "conditions which are hazardous to public health and safety" so as to prevent "fires and epidemics," Camara, 387

U.S. at 535, so too is there an important public interest in promoting school safety and security so as to protect students from weapons, drugs, and theft. The existence of a valid public interest, which may provide an initial justification for a proposed categorical exception from the probable cause standard, should not be used to authorize searches without particularized suspicion, should not be used to authorize the introduction of any "silver platter" fruits in a subsequent criminal proceeding, and, in any event, cannot be used to authorize unlimited searches beyond those specifically designed to protect the identified public interest.12/ Here, the recognition of a

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12. Responding to the asserted public interest of protecting students from weapons, drugs and theft, many lower courts -- with a startling lack of reference to the necessary limitations on categorical exceptions -- have allowed all school searches on less than probable cause rather than properly limiting the searches. Recognition of the valid public interest, however, is hardly sufficient in itself to justify an erosion of Fourth Amendment protections. As expressed [cont'd. on next pg]

categorical exception, as urged by petitioner and its amici, is not even properly before this Court for the simple reason that the assistant principal's search was never premised upon protecting an important public interest.

As required in other settings by this Court, categorical exceptions must be limited in scope to the narrow purposes for which they are permitted. See, e.g., Dunaway v. New York, 442 U.S. 200, 219 (1979). For example, in the context of border patrol stops, the officer may briefly question the driver and passengers about their citizenship, immigration status, and any suspicious circumstances, but "any further detention or

by William Buss in "The Fourth Amendment and Searches of Students in Public Schools," 59 Iowa L. Rev. 739, 770 (1974), an article critical of lower courts' departure from the probable cause requirement in school searches, the public interest concern, although a valid one, "is the beginning, not the end, of analysis."

search must be based on consent or probable cause." United States v. Brignoni-Ponce, 422 U.S. 873, 881-82 (1976); accord, United States v. Martinez-Fuerte, 428 U.S. 543, 567 (1976). Pursuant to the categorical exception for investigative stops on less than probable cause created by Terry v. Ohio, 392 U.S. 1 (1968), a pat-down for weapons is permitted for the purpose of officer safety, but only when the police have "reasonable grounds to believe" that the person stopped is armed and dangerous. See, e.g., Pennsylvania v. Mimms, 434 U.S. 106 (1977). A search or seizure for other purposes must be based on probable cause.

In the public schools generally, there may be, as petitioner and its amici urge, a strong public interest in protecting students from weapons, drugs and other contraband. But no such interest is at stake in this case. Here, the assistant principal engaged

in a search to ascertain whether a student had lied to him in response to a teacher's charge that she had violated a school rule against smoking cigarettes in an unauthorized area. Moreover, neither the possession of cigarettes (the object of the search) nor the smoking of them in designated areas was itself a violation of school rules. Accordingly this case does not properly concern the adoption or application of a possible categorical exception to the probable cause requirement for searches designed to combat serious threats to school safety or security. Adoption of the unlimited categorical exception urged by petitioner and its amici would result in the sanctioning of searches of unpredecented scope merely because they occur in a school setting, not because of a need to respond to a unique danger.

B. PETITIONER HAS NOT SHOWN THAT THE RELEVANT PUBLIC INTEREST WOULD NOT BE SERVED UNDER THE TRADITIONAL PROBABLE CAUSE STANDARD

In Camara the Court upheld the reasonableness of administrative searches under a relaxed standard of probable cause in part because the traditional probable cause test (probable cause to believe that a particular dwelling contains violations of the minimum standards presented by the code being enforced) would not permit an acceptable level of administrative protection:

> The public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions -- faulty wiring is an obvious example -- are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself.

387 U.S. at 537. Here, however, not only do searches of students fit well within the

traditional probable cause model, but an additional public interest strongly counsels against permitting routine searches, such as the one at issue here, on less than probable cause.

1. Petitioner has not shown that "acceptable results" could not be accomplished if the traditional probable cause test were followed. In fact, much more so than citizens on the street, students in school are subject to almost constant monitoring since "teachers are in direct, day-to-day contact with students both in the classrooms and in the other varied activities of a modern school." Ambach v. Norwick, 441 U.S. 68, 78-79 (1979). Accordingly, as pointed out in LaFave, Search and Seizure, § 10.11 at 459-60, the fact situations reported in school search cases "strongly suggest that in most instances the evidence of wrongdoing prompt-

ing teachers or principals to conduct searches is sufficiently detailed and specific to meet the traditional probable cause test." Of those which do not, "most of them appear to involve information so vague and equivocal as to hardly justify the step of searching a student's person or locker." Id. at 460-61. Such cases, although ostensibly acknowledging the validity of Fourth Amendment protections in schools, in reality withhold all safeguards by leaving virtually unlimited discretion in the school officials. See Comment, "Students and the Fourth Amendment: 'The Torturable Class,'" 16 U. C. Davis L. Rev. 709, 724 (1983). For example, searches have been upheld on a "reasonable suspicion" standard because a student was found in a hallway rather than in an assigned class[13/] or merely because a student

13. State v. Baccino, 282 A.2d 869 (Del. 1971) (upholding search of student's coat on this basis and on the assertion that the student was known to have expe-
[cont'd. on next pg]

put his hand into his clothing upon approach of the principal.[14]/

Although school officials need not ignore such circumstances, it does not follow that school officials should immediately search the student. LaFave, Search and Seizure, § 10.11 at 461 n.47. Unlike a police encounter with suspicious pedestrians on the street, school authorities have ample opportunity for further observation or questioning of students at school due to compulsory attendance rules. See, e.g., People v. D., 34 N.Y.2d 483, 358 N.Y.S.2d 403, 315 N.E.2d 466 (1974).

2. Apart from the public interest considerations which arguably might support a limited categorical exception not relevant

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rimented with drugs in the past).

14. State v. Young, 234 Ga. 488, 216 S.E.2d 586 (1975).

here, there is a countervailing public interest consideration which militates against the allowance of any categorical exception whatsoever to the Fourth Amendment's probable cause requirement in the public school setting. This countervailing consideration is the pedagogic objective of teaching constitutional values by example, for, "[i]n the long run, respect for law is the most cherished civic virtue that schools can impart." State in the Interest of T.L.O., 463 A.2d 934, 942 (N.J. 1983).

Not only does our Nation's commitment to public education "demonstrate our recognition of the importance of education to our democratic society," but public education provides "the very foundation of good citizenship." Brown v. Board of Education, 347 U.S. 483, 493 (1954). Imparting the values of good citizenship necessarily means that, of the many functions which school officials

perform, there are "none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943).

Judicial recognition of this pedagogic objective is neither isolated or outdated. As Justice Powell recently summarized for the Court: "The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions." Ambach v. Norwick, 441 U.S. 68, 76 (1979)

(citations omitted).[15] In fact, as Justice Powell keenly observed, particularly important in imparting values is a school official's (particularly a teacher's) actual conduct in relation to the students: "a teacher serves as a role model for his students, exerting a subtle but important influence over their perceptions and values. Thus, through both the presentation of course materials and the example he sets, a teacher

15. In addition to quoting from Chief Justice Warren's observations in Brown v. Board of Education, 347 U.S. 483, 493 (1954), Justice Powell cited, e.g.:

> Keyes v. School Dist. No. 1, 413 U.S. 189 (1978) (Powell, J., concurring in part and dissenting in part); San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 29-30 (1973); Wisconsin v. Yoder, 406 U.S. 205, 213 (1972); id., at 238-239 (White, J., concurring); Abington School Dist. v. Schempp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring); Adler v. Board of Education, 342 U.S. 485 (1952); McCollum v. Board of Education, 333 U.S. 203 (1948) (opinion of Frankfurter, J.,); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

Ambach v. Norwick, 441 U.S. 68, 77 (1979). Justice Powell also observed that the judicial "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." Id. at 77 (citations omitted).

has an opportunity to influence the attitudes of students toward government, the political process, and a citizen's social responsibilities. This influence is crucial to the continued good health of democracy." Id. at 78-79 (footnotes omitted).

Since school officials "function as an example for students," id. at 80, students learn important constitutional values through the very actions of school officials. If school officials were allowed, for example, to suspend students for excercising free speech contrary to Tinker, to segregate students contrary to Brown, to suspend students without due process contrary to Goss, and to conduct routine searches of students without probable cause contrary to the Fourth Amendment, it is doubtful that such students in later life would have any sense of the constitutional values of freedom of expression, of racial equality, of fairness, and of per-

sonal privacy from unreasonable searches. Yet these guaranteed rights are among the very foundations of our democracy.

C. THE PERSONAL NATURE OF THE SEARCH CONDUCTED BY THE ASSISTANT PRINCIPAL ENTAILED AN INVASION OF PRIVACY AS INTRUSIVE AS A POLICE SEARCH FOR EVIDENCE OF A CRIME

Contrary to petitioner's argument, lesser Fourth Amendment protections do not apply merely because the assistant principal was not a police officer or because he did not suspect T.L.O. of criminal behavior. Rather, full protection is required in view of the personal nature of the search.16/

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16. The Solicitor General maintains, in his Brief for the United States at 13, that "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures," quoting South Dakota v. Opperman, 428 U.S. 364, 370 n.5 (1976). As Justice Powell pointed out in his concurring opinion, however, the probable cause requirement has also been applied outside the context of a criminal investigation, as exemplified by Camara. Justice Powell also distinguished the police automobile inventory search at issue in Opperman from the administra-
[cont'd. on next pg]

1. This Court emphasized in Camara that the overriding purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." 387 U.S. at 528. The Court thus rejected the reasoning of Frank v. Maryland, 359 U.S. 360 (1959), in which Justice Frankfurter viewed the right of privacy affected by administrative searches as "peripheral" compared to the central interest of "self protection" involved in criminal investigations. Under

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tive building code search in Camara based on the amount of discretion left to officials. In contrast to building code inspections, where the practical effect of the warrantless search procedures had been to leave the occupant subject to the discretion of the official in the field, no significant discretion is placed in the hands of the individual officers conducting automobile inventories. They "usually ha[d] no choice as to the subject of the search or its scope." Id. at 384. In the context of school searches, school officials constantly make discretionary determinations whether or not to conduct searches. Unlike Opperman, this case raises concerns similar to those addressed by the Court in Camara.

Frank, the reach of constitutional protections depended on whether the search was part of a criminal investigation which might lead to prosecution. See also Abel v. United States, 362 U.S. 217 (1960) (per Frankfurter, J.). In Camara, 387 U.S. at 530, the Court explicitly rejected the Frank analysis, pointing out that it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

Even if such a distinction were valid, however, it would not justify lesser Fourth Amendment protection in cases where, as here, the fruits of searches by school officials lead to criminal prosecutions. Cf. Wyman v. James, 400 U.S. 309 (1971) (Camara and See distinguished on this ground). Many states require school officials to report evidence of student criminal violations to the police,

and the states may prosecute school officials for failure to comply with reporting or enforcement requirements. See supra note 9. Even where intimate cooperation between police and school officials is not statutorily required, it is virtually impossible to separate police and school roles in public school searches because of the actual and potential cooperative relationship between police and school officials, and because of the lack of any bright line between the school officials' desire to help the police and to protect the safety of the school environment. The danger to Fourth Amendment rights posed by a two-tiered "silver platter" standard tied to the "uniform" of the searchers invites subversion of both our system of public education and our criminal justice system.17/

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17. As discussed by William Buss in "The Fourth Amendment and Searches of Students in Public Schools," 59 Iowa L. Rev. at 788:
[cont'd. on next pg]

Finally, while the use to which particular evidence is put is not -- and should not be -- conclusive in assessing Fourth Amendment protection, it may be relevant in determining the constitutional reasonableness of a search. In fact, the quantum of Fourth Amendment protection available in a given setting should be a function of at least two variables: the degree to which the intrusion affects personal privacy; and the use to which the evidence is put. Where, as here, a

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So long as school officials are permitted broad authority to make searches, and then to turn over the evidence to police who themselves would have been banned by the Fourth Amendment from making the search, there is a substantial likelihood that arrangements will be (and evidence that they have been) worked out so as to make such turnovers possible. The temptation to circumvent the usual Fourth Amendment restrictions by such school-police arrangement presents a serious danger of subverting both the educational and criminal justice systems.

significant intrusion into personal privacy is coupled with the use of the fruits of a search in a criminal proceeding, the case for full Fourth Amendment protection is at its highest point.

2. In any event, the primary inquiry in the third aspect of the Camara balancing test thus rests not in merely labeling the role or intent of the official searcher, but in assessing the privacy interests at issue and in comparing the intrusiveness of the search with a police search for evidence of a crime. As to this inquiry, there should be no question that a student in school has a substantial, if not extraordinary, expectation of privacy in the contents of the purse she carries on her person, and that an invasion of that privacy by a school official is every bit as intrusive as an invasion in a police search.

A purse, the functional equivalent of a pocket, typically contains items of highly personal nature. Especially for shy or sensitive adolescents, it could prove extremely embarrassing as well as injurious to personal integrity for a teacher or principal to rummage through its contents -- which could include notes from friends, fragments of love poems, caricatures of school authorities, as well as items of personal hygiene. Astonishingly, petitioner argues that T.L.O.'s purse, "voluntarily and unnecessarily brought into school, may be deemed to be an item in which any privacy interest was so minimal, that as to it, the Fourth Amendment is inapplicable." Even if it were true that all the personal items carried in a purse or pocket are "unnecessary," adoption of petitioner's view would strip students of any privacy interest in their personal "papers and effects," precisely those precious ex-

pressions of individuality that the Constitution so resolutely protects from undue state interference.

Invasion of this privacy may be even more intrusive when the search is conducted by a school official, who has frequent contacts with the students, than when the invasion is conducted by a police officer, who has no such regular student contact. Apart from these different levels of intrusiveness vis-a-vis students' intimate privacy, the assistant principal here conducted the search purportedly to obtain evidence of an infraction, just as a police officer would initiate a search to obtain evidence of wrongdoing.

The school setting context here, in fact, provides enormous potential for abuse of official discretion. In New Jersey, public school students must submit to the authority of school officials, and, under state law, the students must obey. See,

e.g., N.J.S.A. 18A:37-1. Furthermore, the consequences of even an innocent, isolated or minor violation of school rules may lead to suspension, disqualification from athletics or other school activities, or expulsion (or, even as in this case, a criminal proceeding). These are frightening, even devastating, consequences for most high school students, with high stake effects on their future development. See, e.g., Goss v. Lopez, 419 U.S. 565, 575 (1975) (one-third of randomly selected "colleges specifically inquire of the high school of every applicant for admission whether the applicant has ever been suspended").

CONCLUSION

Whatever one's view as to the "reasonable suspicion" standard applied below, the judgment below is correct because evidence used as part of the case-in-chief in a crimi-

nal prosecution must be obtained in compliance with standards substantially more stringent than the search at issue here. Evidence seized pursuant to a search that cannot satisfy even a minimal standard of objectively "reasonable suspicion" cannot, consistent with the Fourth Amendment, be the basis of a criminal prosecution.

We submit that the more stringent probable cause standard must govern the acquisition of evidence by public school officials which is used in criminal proceedings. While the government may conduct certain carefully defined categories of searches on less than probable cause under circumstances not present here, the standards governing criminal investigations must govern the admissibility of the evidence where the state seeks to convict a student of a criminal offense.

For the foregoing reasons, the judgment of the Supreme Court of New Jersey should be affirmed.

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